IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH JAIPUR.

::ORDER::

S.B. CIVIL WRIT PETITION NO.1706/2007

Shobhit Kasliwal & Ors.
Vs.
CBSE & Ors.

Date of order : 1/10/2007.

::PRESENT::

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Bharat Vyas with
Shri Sandeep Pathak,
Shri Jitendra Miturka for the petitioners.
Ms. Pawan Bhati for
Shri R.P. Singh for the respondents.

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BY THE COURT :-

This writ petition has been filed by nine students of class XIIth who are aggrieved by the action of the respondent- Central Board of Secondary Education in directing the Indo Bhart

International School, Jaipur vide letter of its Joint Secretary dated 27.2.2007 to withhold the admit card of these students and if the admit cards have already been issued to them, not to allow them to appear in the examination due to commence from 1.3.2007.

Dispute arose when the Central Board of Secondary Education (CBSE) withheld the result of the petitioners of class Xth examination on the premise that they were not eligible to appear in that examination as according to the CBSE Regulations only such candidates, who secured minimum 33% marks in each of the subjects of Class IX was eligible to appear in class Xth Examination. The students at that time approached this Court by filing as many as 22 writ petitions. During the pendency of the

writ petitions, this Court summoned the result of the students for perusal and found that most of the students had cleared the class Xth examination. The learned Single Judge, therefore, allowed the writ petition holding that the CBSE should have first checked the credentials of the school which are affiliated to it. Aggrieved thereby, the CBSE filed special appeals before the division bench of this Court. The division bench however, dismissed the appeals. But the letter sent by the Joint Secretary to the Principal of the concerned school in the present case dated 27.2.2007 indicates that the school was directed to withhold the admit cards of the petitioners pursuant to interim order passed by the Supreme Court on 3.3.2006 in the Special Leave to Petition filed by CBSE.

Eventually, however the special leave to petition came to be dismissed by the Hon'ble Supreme Court by judgment dated 24.7.2007. The Hon'ble Supreme Court in the said judgment held as under:-

> "Leave granted in all special leave petitions.
> In this batch of appeals, the question involved is as to whether the respondents were validly admitted to class X studies by the reason that they had fialed in class IX. They appeared in class X examination conducted by CBSE. The CBSE withheld the reseult of Class X. Aggrieved thereby, the students approached the Single Judge by way of a writ petition which issued a mandamus to CBSE to declare the results. Aggrieved thereby, the Board preferred an appeal before the Division Bench, which by its impugned order, affirmed the order of the learned Single Judge.
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> Pursuant to the direction of the Division Bench, the Class X results of the respondents were declared by CBSE in November 2005. It is revealed from the counter affidavit, and not denied in the rejoinder affidavit, that after declaration of the Class X results, the respondents pursued their studies in Class XI. They

> passed Class XI and thereafter got admission in Class XII. By an interim order granted by this Court on 3.3.2006, the CBSE did not allow the respondents to sit in Class XII examinations.
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> In this view of the matter, the whole exercise has become acamdemic. We are not prepared to jeopardise the students' career at this stage. The appeals have now become infructuous and are disposed of as infructuous. The question of law rasied in these appeals by the CBSE is, however, left open."

Shri Bharat Vyas, the learned counsel for the petitioners has argued that the petitioners were prevented from appearing in the examination in view of the interim order passed by the Hon'ble Supreme Court on 3.3.06. Now that the Supreme Court while dismissing the appeal filed by the CBSE itself has declined to interfere in the matter, the petitioners are entitled to be allowed in the special examination.

In fact, when the matter came up for consideration of this Court on 31.8.2007, it was pointed out by the learned counsel for the petitioners that the special leave to petition filed by the CBSE has been dismissed and that the petitioners has studied for complete academic year as regular students of class XII. When they were about to appear in the final examination due to commence on 1.3.2007, the CBSE had prevented them from appearing in the examination and if special examination is not immediately held they might loose their one precious acamedic year. In that situation, the respondent CBSE was directed to intimate the Court as to on what date the special examination for the petitioners who are in all nine in number can be conducted. Hearing of the matter was deferred to

10.9.2007, but when the case was listed on 11.9.2007, one last opportunity of one week was again granted on the request of learned counsel for the respondent to seek instruction and the matter was adjounred to 21.9.2007. Today again when the matter came up for hearing the learned counsel for the respondent was not in a position to make any statement on the points rasied by the Court in its order dated 31.8.2007. In the circumstances, therefore, the matter was heard for being decided finally.

On the other hand, the learned counsel for the respondent argued that there was no provision for holding special examination for the petitioners of class XIIth.

Genesis of the dispute in fact lies in the action of the respondent Board in

withholding the result of the petitioners on the premise that the petitioners had not passed out the IXth class examination as per the rules prescribed by the CBSE Regulations. The learned Single Judge while allowing the writ petition of the petitioners directed that if at all the CBSE wanted to take any action, it should have done so within the reasonable time and not suddenly after completion of the examination at the threshold of the declaration of result. Special appeal filed against the aforesaid judgment was dismissed by the division bench observing that it is open to the Board to refuse the admission of the students to appear in class X examination on the ground that their admission in class X was illegal on the ground of their result in class IX, but having allowed them to appear in

class X examination, they could not be permitted to withhold their result. Hon'ble Supreme Court on consideration of the fact that after declaration of the result of the class Xth examination of the petitioners and other students, they pursued their studies in class XIth and having passed class XIth they got admission in class XIIth. The Hon'ble Supreme Court further noted that CBSE did not permit the students to appear in class XII examination pursuant to interim order by it on 3.3.2006. Having noted subsequent developments, their Lordships held that the whole exercise had become academic and that their Lordships were "not prepared to jeopardise the students's career at this stage". In that situation, appeals were disposed of as having become infructuous. The question

of law raised in those appeals by the CBSE was however left open.

It would be thus evident that the petitioners were not allowed to appear in the examination of XIIth pursuant to interim order by the Supreme Court. When the Hon'ble Supreme Court was appraised of the fact that after declaration of class Xth result, the students pursued their studies in class XIth and even secured admission in class XII and were denied appearance in class XII examination, it was held that the Court was not prepared to jeopardise the students'career at this stage. The appeal was thus dismissed as infructuous. In the circumstances, therefore, the petitioners who were otherwise eligible to further pursue their studies on the basis of the result of the examination of class Xth

cannot be denied that benefit, which flows from the judgment passed by this Court, particularly when the Hon'ble Supreme Court also declined to interfere in the matter so as not to jeopardise the students's career at this stage.

In the circumstances, if at this stage, the petitioners are requried to await for whole year for appearing in the examination of class XII, they might loose their one precious academic year which may have recurring effect on their future career. In the peculiar facts and circumstances of the case, therefore, it is appropriate to direct the CBSE to hold a special examination for the petitioners for class XIIth within one month from the date of production of certified copy of this order at any of the examination center at Jaipur and declare the result

thereof within a fortnight thereafter.

With the above directions, the writ petition stands allowed.

(MOHAMMAD RAFIQ), J.

Skant/-